

Meeting of 2009-3-10 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING
MARCH 10, 2009 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr. Also Present:
Presiding Larry Mitchell, City Manager
 Frank Jensen, City Attorney
 Traci Hushbeck, City Clerk
COL Robert Bridgford, Fort Sill Liaison

Mayor Purcell called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Dr. Walter Wilson, Friendship Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
James Hanna, Ward Two
Janice Drewry, Ward Three
Jay Burk, Ward Four
Robert Shanklin, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven (Arrived @ 6:22 pm)
 Doug Wells, Ward Eight

ABSENT: None

ROLL CALL

PROCLAMATION FOR VIETNAM VETERANS AWARENESS DAY

Mayor Purcell proclaimed March 19, 2009 as Vietnam Veterans Awareness Day and presented the proclamation to members of the Vietnam Veterans of America, Inc., Lawton Chapter.

The public was invited to a ceremony on March 16th at 10:50 a.m. at Elmer Thomas Park.

STATE OF THE CITY ADDRESS BY MAYOR JOHN P. PURCELL, JR.

Mayor Purcell gave the State of the City Address, which is included as an attachment.

CONDUCT ELECTION OF MAYOR PRO TEM

MOVED by Hanna, SECOND by Haywood, to elect Doug Wells as Mayor Pro Tem.

Drewry stated she feels it would be better to have some experience on the City Council before serving as Mayor Pro Tem.

SUBSTITUTE MOTION by Drewry, SECOND by Shoemate, to elect Jay Burk as Mayor Pro Tem. AYE: Shoemate, Drewry, Burk. NAY: Hanna, Shanklin, Zarle, Haywood, Wells. MOTION FAILED.

VOTE ON ORIGINAL MOTION: AYE: Hanna, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: Drewry, Burk. MOTION CARRIED.

AUDIENCE PARTICIPATION: None.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF FEBRUARY 24, 2009 AND THE SPECIAL MEETING OF MARCH 2, 2009.

Mayor Purcell stated there is a correction that needs to be made in the minutes of March 2, 2009. Fourth line from the bottom should say Wells, not West.

MOVED by Hanna, SECOND by Drewry, to approve the minutes of February 24, 2009 and March 2, 2009 as corrected. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED.

Mayor Purcell stated that they need to strike item #21.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Shanklin requested item #7 be considered separately.

MOVED by Drewry, SECOND by Shoemate, to approve the Consent Agenda with the exception of item #7. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval and consider passage of the resolution authorizing the City Attorney to file a friendly suit for the claims which are over \$400.00: AT&T Telephone L.P. in the amount of \$1,026.46 **(RES 09-29)**, Gerhard Beck in the amount of \$195.00 and Donald and Linda Pendergraph in the reduced amount of \$5,268.12 **(RES 09-30)**. Exhibits: Legal Opinions/Recommendations, Resolution No.____, Resolution No.____.
2. Consider the following damage claims recommended for denial: Southwestern Bell Telephone L.P. in the amount of \$4,186.30 and K.B. Chang in the amount of \$962.00. Exhibits: Legal Opinions/Recommendations.
3. Consider approval of the Retainer Agreement for Legal Services between the City of Lawton and Lisa Freeman and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Retainer Agreement for Professional & Legal Services on file in City Clerk s Office.
4. Consider accepting donation of \$500.00 contributed by Dr. Alan E. Aycock for the Tactical Unit of the Lawton Police Department. Exhibits: None.
5. Consider waiving all fees and permits associated with the replacement of a fence and playground equipment at Northwest Baptist Church, Lawton, Oklahoma, for L. Curtis Thompson, in order for him to complete the necessary steps to attain the rank of Eagle Scout, and authorize License and Permits to execute any necessary documents associated with the waiving of requirements for the proposed project. Exhibits: Request letter from L. Curtis Thompson III and Eagle Scout Project Workbook and Plans for the Project.
6. Consider approving and accepting a donation from the Lawton Public Schools and Lawton Enhancement Trust Authority for the benefit of planting trees in Elmer Thomas Park and approving a staff pre-determined location for the planting of the trees in Elmer Thomas Park. Exhibits: Copy of Letter of Request and Map of Predetermined Planting Site.
7. Consider approving and accepting a donation from the United Way Success by 6/Smart Start Lawton Leadership Committee for the benefit of installing a Born to Learn Trail in Elmer Thomas Park and approving a staff pre-determined location for the trail in Elmer Thomas Park. Exhibits: Copy of Letter of Request.

Shanklin questioned where this will be located.

Kim Shahan, Parks and Recreation Director, stated this will be located in the small circular area right in front of the Museum of the Great Plains.

MOVED by Shanklin, SECOND by Haywood, to approve and accept a donation from the United Way Success by 6/Smart Start Lawton Leadership Committee for the benefit of installing a Born to Learn Trail in Elmer Thomas Park. AYE: Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED.

8. Consider approving a credit adjustment in the amount of \$593.19 to Diana Garcia s utility account #00018764 for the property at 4631 SW J Avenue for unexplained high consumption. Exhibits: Notarized Statement from Mrs. Diana Garcia and Copy of customer s service bill.
9. Consider acknowledging receipt of a Tier I permit from the Oklahoma Department of Environmental Quality for the construction of 210 linear feet of 8-inch PVC water line, 10 linear feet of 6-inch PVC water line and all appurtenances to serve the Switzer s Locker Room located at 602 SW 82nd Street in the NW/4 of Section 32, T2N,

R12W, I.M., Comanche County, Oklahoma. Exhibits: Permit to Construct on file in the City Clerk's Office.

10. Consider setting a date of April 14, 2009, to hold a public hearing and consider an ordinance closing 5 feet of the utility easement on Lot 54 and 10 feet of the utility easement on Lot 55, Block 4, Blys Pointe Addition, Part 3, also known as 316 and 318 SW Boatsman Avenue. Exhibits: Location Map, Application and Surveys.

11. Consider extending the contract (CL08-040) Footwear (Safety, Athletic, Walking)-Item: Safety with Woodward's Department Store of Cyril, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

12. Consider extending the contract (CL08-040) Footwear (Safety, Athletic, Walking)-Item: Athletic with Kessler's Team Sports of Tulsa, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

13. Consider extending the contract (CL08-041) Self-Contained Breathing Apparatus (SCBA) with Wayest Safety Inc. of Oklahoma City, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

14. Consider extending the contract (RFPCL08-063) Workers Compensation Administration Services with United Safety & Claims, Inc. of Tulsa, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

15. Consider extending the contract (CL08-035) Hydraulic Root Saws with J&R Equipment LLC of Oklahoma City, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

16. Consider approval of payroll for the period of February 23 - March 8, 2009.

NEW BUSINESS ITEMS:

17. Hold a public hearing and consider an ordinance changing the zoning from R-1 (Single-Family Dwelling District) to R-2 (Two-Family Dwelling District) zoning classification with a binding site plan located at 802 and 804 NW Hilltop Drive. Exhibits: Ordinance No. 09-____ with site plan, Location Map, Application and CPC Minutes.

Richard Rogalski, Planning Director, stated this request is for Lots 24 and 25, Block 8, Runyon Hill Side Addition, Part 3. The purpose of the request is to construct a duplex on each lot. The applicant and property owner is Market One Real Estate, LLC. A binding site plan is required for this request because the request abuts single-family residential.

The zoning of the surrounding area is R-1 to the north, east, and west, and P-F (Public Facilities District) to the south. The land use of the surrounding area is single-family residential to the north, east, and west and Highlands Cemetery to the south. The 2030 Land Use Plan designates this area as Residential/Low Density.

On February 12, 2009, the City Planning Commission held a public hearing on this request. During the public hearing one person spoke against the request and one person spoke in favor of the request. The CPC, by a vote of 7-0, recommended approval of the request and the site plan submitted with the application.

Notice of public hearing was mailed to 39 property owners within 300 feet of the requested area on February 17, 2009, and proper notice was published in the *Lawton Constitution* on February 22, 2009.

Hanna questioned how many property owners responded to the notification.

Rogalski stated no one responded to this notice of public hearing.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Wells, SECOND by Drewry, to adopt **Ordinance 09-09** waive the reading of the ordinance, read the title only. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 09-09

An ordinance changing the zoning classification from the existing classification of R-1 (Single-Family Dwelling District) to R-2 (Two-Family Dwelling District) zoning classification on the tract of land which is hereinafter more particularly described in Section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing

changes to be made upon the official zoning map in accordance with this ordinance.

18. Consider an ordinance amending Section 17-1-6-164, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2005, by amending the personnel policies and procedures pertaining to family leave, providing for severability, and declaring an emergency. Exhibits: Ordinance 2009-____.

Jensen stated that last year the Federal Department of Labor passed a massive amount of amendments to the Family Medical Leave Act (FMLA) that staff has incorporated into the city code provisions. He stated there are three categories for the amendments. The first is that leave can be requested and granted for pre and post activities surrounding a deployment for a member of the National Guard or Reserve. The second category is amplifying or clarifying some procedures on requesting leave under the FLMA and having that request granted. The third category is for the giving of care for military members, whether they are active duty, Guard or Reserve, who are injured in connection with a deployment or an operation overseas and being able to have a spouse or other relative provide care for that injured service member.

Shoemate questioned the term exigency.

Jensen stated that in the ordinance, section 6 (a) (h) lists the types of exigency leave.

MOVED by Haywood, SECOND by Hanna, to adopt **Ordinance 09-10** waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 09-10

An ordinance pertaining to personnel policies and procedures amending Section 17-1-6-164, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2005, by incorporating into city code the recent federal changes to the Family Medical Leave Act, providing for severability, and declaring an emergency.

19. Consider an application for a revocable permit to use a portion of the NW Taft Avenue right-of-way east of NW Sheridan Road for parking and maneuvering. Exhibits: Application and Site Plan.

Rogalski stated an application has been submitted for a revocable permit to use the north 40 feet of the right-of-way of NW Taft Avenue just east of NW Sheridan Road for parking and maneuvering. The applicant and property owner is Bob Dismuke. The proposed use of the property is a day care center. He stated this was an existing facility and they are applying for a more intense use. City code states that the parking needs to be provided but if the provision of the code causes a discontinuance of the use of the right of way, then the request can come before the City Council for a revocable permit to continue the use of the right of way. In the past there was some parking allowed off of Sheridan Road. The first site plan submitted showed they did not want to continue the use of Sheridan.

Rogalski distributed an amended site plan provided by the applicant. This site plan incorporates almost all of the conditions listed in the agenda item commentary. He stated with this new site plan, staff is recommending approval of the revocable permit. He stated there is no curb opening along Taft and staff is recommending that the curb be reconstructed to code.

Haywood questioned if Mr. Dismuke would be able to take care of this issue.

Bob Dismuke, applicant, stated this makes about the fourth plan he has submitted. He is trying to cooperate but he is giving up five parking spots on Sheridan Road. There are many businesses that back onto Sheridan Road and he does agree that it is not a good idea. He has tried to beautify this area and the parking has served well for many decades. The area on Taft is blacktop and he feels like replacing the blacktop and putting in new curbing is an excessive expense. He has been trying to get this done for several months and he just wants to get the issue resolved.

Hanna stated the south side parking lot just needs to be weeded and cleaned up. He stated he needs to put up a chain or block off the side facing Sheridan Road so that it will not be used for parking.

Shoemate stated the previous business did back out onto Sheridan Road. He questioned if there was parking available on the east side of the building.

Hanna stated no, it was fenced in.

Wells stated he drove by and it seems like a day care center would be a great thing for the neighborhood. He also

understood that the house next door would also be rented out which would include a couple more parking spots.

Shanklin stated he feels this could be made to work.

Mayor Purcell stated staff is now recommending approval with the new site plan.

Wells questioned if Mr. Dismuke has had to pay a fee every time he has resubmitted a drawing.

Mr. Dismuke stated he has only paid the fee one time. He has had to pay to have revisions made to the drawings.

Rogalski stated the site plan came from the applicant. They are down to the issue of how exactly they should handle the parking. The property owner wishes to grandfather in the parking situation and provide that parking on the existing asphalt. Staff is recommending that it be constructed as if it was a new parking space.

Wells questioned if staff was recommending a curb in the front area.

Rogalski stated staff is recommending that a curb or something be added to block this off.

Wells stated they could add parking blocks or chains.

Rogalski stated parking blocks would be suitable, but a pole and chains would be a hazard because it is too close to Sheridan Road.

Wells stated he feels we should issue the permit and grandfather in the asphalt parking lot the way it is.

Hanna stated there is ample parking across the street.

Wells stated he feels they are here to provide a service to citizens and not give them a hard time.

Mayor Purcell stated if they are approving the new site plan with the seven slanted parking spaces, then people are going to have to drive over the curb to get to these parking spaces.

Wells stated they can drive up on the asphalt that is already there.

Rogalski stated they will just have to re-stripe the existing asphalt.

Wells stated he would hate to see this project fall through because the costs become too high.

Shoemate questioned if city staff can assist an applicant when the site plan has to be corrected.

Rogalski stated the applicant has the right to appeal to the City Council with whatever they want. He stated staff can only make recommendations and they do try to assist the applicant and they typically will accept whatever they submit.

Shoemate stated staff is here to help business owners.

Wells stated he feels that Mr. Rogalski does a fantastic job in trying to help the citizens and he appreciates his comments.

Haywood stated that Mr. Rogalski does a great job in helping people.

Shanklin questioned how long Mr. Dismuke has been trying to get this done.

Mr. Dismuke stated since January.

MOVED by Wells, SECOND by Hanna, to issue the revocable permit based on the amended site plan but with no requirement to repave on Taft and a requirement to block off any parking on Sheridan Road. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk. NAY: None. MOTION CARRIED

20. Discuss conduct of City Council. Exhibits: None.

Hanna stated all eight of the City Council members have been elected to represent citizens from different areas of town. He feels that if he has something to say, every individual on the City Council should listen to what he has to say and the same respect should be shown to everyone. He does not feel that anyone should sit here and make faces and embarrass themselves. The media has picked this up and it makes everyone look like a fool. He stated they all try to do a professional job and try to move this city forward and quit making a mockery of this Council.

Everyone should be entitled to have their own opinion and still work together. As long as they keep working apart they are never going to get there. If they don't agree with someone else, tell them why. They need to remember that the citizens voted them in and they can vote them out.

Hanna exited the meeting @ 7:11 p.m.

21. Consider approving Change Order #5, with J. L. Walker Construction, Inc. for the Historical Lawton High Project, for IT improvements, Phase II, and take appropriate action as deemed necessary. Exhibits: Email correspondence from Aaron Beasley, Meyer Architecture (3/5/09), Cover Letter Meyer Architecture Plus and J. L. Walker Construction Meeting Agenda.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Shoemate reported that all three Lawton high schools were represented on national championship cheerleading teams at the national competition last weekend in Dallas. He congratulated Lawton High basketball team on going to state.

Drewry thanked Mike McKee, Lawton Christian Academy, for providing twelve beds for the Salvation Army shelter.

Shanklin stated he has some concerns about item 21. He does not know if they are all on the same page regarding the dissection of tree in Elmer Thomas Park. Some are looking good. He questioned what we were doing at the landfill.

Mitchell stated there is a contractor on site building a new cell.

Shanklin stated someone stopped him in the hallway complaining about the cleanliness of the women's restrooms.

Haywood thanked Dr. Wilson for coming.

Wells requested a report on site triangle violations when both a citizen has complained and also when a staff member recognized the violation. He questioned if the ambulance committee was still active.

Mitchell stated it is not an active committee.

Wells stated they may want to look at starting that committee back up. He stated he has done some research regarding the filing of fees against insurance companies when the police and fire cover wrecks. He stated regarding Code Red, there used to be a designated number of phone lines associated with Code Red and he questioned if we were doing this locally or if it is being handled out of Florida. If you had forty phone lines and you tried to notify all 20,000 homes in Lawton, it is not going to be a two minute thing, it is going to be a two hour thing. He stated people need to understand there are limitations and they do not need to rely solely on this notification.

Mitchell stated they will know more after it is tested.

Wells stated for small areas it is an excellent system. Citizens need to keep watching their TV. He reported that the Golden Dragon acrobats will be performing at the Simmons Center on Thursday evening at 7:00 p.m. He stated on Tuesday, March 17th from 7:00 a.m. to 9:00 a.m. there will be a kick off breakfast to raise funds for the Kid Zone #2 in Elmer Thomas Park.

Mayor Purcell stated he has three vacancies for the Library Board, Building Materials Review Board and the Impact Fee Oversight Committee. He stated there will be a special Council workshop on April 21st at 6:00 p.m. regarding Community Development Block Grant funding and from Parks and Recreation Department regarding plans for Elmer Thomas Park.

The Mayor and Council convened in executive session at 7:20 p.m. and reconvened in regular, open session at 8:29 p.m. Roll call reflected all members present excluding Hanna.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

22. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2009-2010 between the American Federation of State, County and Municipal Employees (AFSCME), Local 3894, and the City of Lawton, and take appropriate action in open session. Exhibits: None.

Mayor Purcell read the title of item 22.

MOVED by Drewry, SECOND by Burk, to appoint Larry Mitchell as chief negotiator with Tim Wilson and Trisha Thomason as members of the City s negotiating team and all department directors as alternate members. AYE: Wells, Shoemate, Drewry, Burk, Shanklin, Zarle, Haywood. NAY: None. MOTION CARRIED.

23. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the City of Lawton s subrogation interest in the case of James Lee Poindexter v. Wichita Emergency Physicians, et al., District Court of Comanche County, State of Oklahoma, Case No. CJ-2008-9, and if necessary, take appropriate action in open session. Exhibits: None.

Mayor Purcell read the title of item 23.

MOVED by Shoemate, SECOND by Drewry, to approve the settlement of the City s subrogation claim for the amount of \$96,000 and authorize the Mayor to execute any necessary settlement documents. AYE: Haywood, Wells, Shoemate, Drewry, Burk, Shanklin, Zarle. NAY: None. MOTION CARRIED.

24. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending investigation and action regarding a private water line leak on or near 50th and Gore, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 24. No action is required.

25. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session for the annual performance employee review of Larry Mitchell as City Manager, and in open session take other action as necessary.

Exhibits:

Employment

Agreement

Summary.

Mayor Purcell read the title of item 25. He stated the consensus of the City Council is that Mr. Mitchell is doing an outstanding job and a new employment agreement has been proposed with no changes in salary or benefits.

MOVED by Burk, SECOND by Zarle, to approve an employment contract with Larry Mitchell, City Manager. AYE: Wells, Shoemate, Drewry, Burk, Zarle, Haywood. NAY: Shanklin. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 8:34 p.m. upon motion, second and roll call vote.

/s/ John P. Purcell, Jr.
JOHN P. PURCELL, JR., MAYOR

ATTEST:

/s/ Traci Hushbeck
TRACI HUSHBECK, CITY CLERK